Third, respondent's observation that New York does not preclude coram nobis petitions on timeliness grounds is also unavailing. To the extent that he uses this observation to establish that his petition was "properly filed," it is beside the point. After all, if respondent's coram nobis petition were precluded by the state on timeliness grounds, no tolling would be afforded to him at all, and the question presented here of when to commence the tolling period would never arise. *See Pace v. Diguglielmo*, 125 S.Ct. 1807 (2005).

To the extent that he suggests that the state's failure to impose a time bar demonstrates that the state has no stake, in the form of a comity interest or otherwise, in the application of the mailbox rule to state petitions, he is grossly mistaken. At the very least, the state must bear the considerable costs that the new rule would engender. More importantly, these multiplied costs place the state in a position of having to deal in state court with the substantial problems of proof spawned by the mailbox rule, even though the state does not adhere to the mailbox rule. Thus, states would be forced to enact or devise rules requiring proof of delivery to prison authorities for all state motions, akin to Federal Rule of Appellate Procedure 4(c), which requires an affidavit from the defendant. Indeed, even this rule is far from satisfactory, as it may be easily circumvented, and more rigorous versions will undoubtedly be necessary to avoid the problems of proof. And rules addressing these issues become necessary even though the state operates on a system as to which receipt constitutes filing, and as to which delivery to prison authorities is irrelevant.

Indeed, in this context, it does not matter whether the state imposes a time bar on any particular state court filing. It is enough that the state court system is forced into a position of having to alter its rules for the delivery and acceptance of state court filings to deal with the problems presented by a federal

rule it has never adopted. Comity requires, at a minimum, respect for state court rules. The forced adoption, at the behest of the federal courts, of new state court rules as to state filings in order to address a problem that the state courts have chosen to deal with differently from the federal courts fails to show proper respect for the state's rules and substantially undermines fundamental comity principles.

In short, while the costs associated with the mailbox rule may be acceptable to the federal courts in the context of their own litigation, it is a vastly different question whether the federal government may force the states to bear the dramatically increased costs that would arise if the rule were applied to state court filings. It is even more problematic to suggest that the states should alter their rules regarding the delivery and acceptance of state court filings in order to deal with problems of proof that do not exist within the state system. It is for these reasons that several federal circuit courts have declined to extend *Houston*, with its considerable associated costs, to this context. And it is for this reason that this Court should take the opportunity to address the limits of the Houston doctrine, particularly in light of the finality and comity interests that are at stake and the substantial disagreement among the circuit courts on this issue.

Respectfully submitted,

RICHARD A. BROWN
District Attorney, Queens County

JOHN M. CASTELLANO*
Assistant District Attorney
**Counsel of Record for the Petitioner*

September 19, 2005